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STATE FOR G/TIP, EAP/BCLTV, EAP/RSP, INL/AAE

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SUBJECT: LAWSUIT AGAINST DAEWOOSA TRAFFICKING VICTIMS

Ref: A. Su-Moeling email 4/26/04 B. Hanoi 336

¶1. (U) Ref A contained documents originally provided by G/TIP allegedly supporting the assertion that the GVN sued victims in the Daewoosa trafficking case to recover the back wages they were paid in the U.S. as part of the court settlement. It also described G/TIP's position that this lawsuit was indicative of the GVN's failure to protect victims of trafficking. Embassy Hanoi has reviewed the documents in detail and consulted with the Hanoi Lawyers' Association and the Ministry of Labor, Invalids, and Social Affairs' Department of Overseas Labor. Our conclusion is that the documents do not indeed support G/TIP's position.

¶2. (U) The Ref A documents show that IMS, the labor company whose CEO and CFO were convicted and jailed in Vietnam for their illegal actions in this case, was required by the GVN to advance the amount of the agreed back wages in cash to the victims upon their return to Vietnam, plus USD 250, or a total of USD 1,750. According to court documents included in ref A, this was done to ensure that the victims were not destitute while waiting for the money from Daewoosa to arrive. In order to receive the advance, the victims were required to promise to return USD 1,500 of the advance to IMS upon receipt of the back wages award. The court documents included in Ref A email indicate that the defendants, including Nguyen Thi Mai Hoa, declined to fulfill their end of the contract upon receipt of the Daewoosa funds delivered by the U.S. Embassy. IMS then sued to recover the funds lent to Hoa under the agreement.

¶3. (U) In simpler language, the victims received the back wages twice -- once as a GVN-ordered loan from IMS to the victims upon their return to Vietnam, and then again as a cash settlement payment by Daewoosa facilitated by the U.S. Embassy. The terms of the advance required the victims to pay back USD 1,500 of the original USD 1,750 advanced temporarily by IMS. Thus, the GVN's actions were to ensure prompt access to funds for recently returned victims, plus an additional USD 250.

¶4. (U) Comment: These actions did not, as apparently argued by G/TIP, represent a "clear failure to protect its TIP victims." After examining the evidence, we come to the opposite conclusion: in making sure that these victims had money to live, and forcing the offending labor company to advance the amount of their compensation, the GVN both protected the victims and punished the trafficker. The fact that the company had to sue the victims to force them to comply with their contractual obligation to refund the advance is not relevant to the GVN's ability or willingness to protect trafficking victims.

¶5. (U) Comment, continued: We also would like to underscore that, under the 2003 labor code (as reported Ref B), the practice of labor export companies requiring substantial cash fees (beyond one month's wages) from laborers before providing them with labor contracts is illegal and punishable by a fine or a jail term. What happened to the Daewoosa victims is now (and was then) a violation of Vietnamese law.

BURGHARDT